CF0000057862

27-10-94 (2)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

CRA 1616 94

Division Bench (Criminal)

Reg 9.11.94

APPEAL OF PRISONER

No. 213 Name हीराधार

Father's name शंकर राम जाति हाडिया

Residence अंकीरा था. परतावहार Age 35 वर्ष

Sentenced to आजीवन कारावास on 27/9/94

Under section 302 भा.द.वि. by न्या.श्रीमान अपर सत्र न्यायाधीश, जगपुर नगर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received

3 Date on which Appeal sent 25/10/94

4 Whether the prisoner wishes to be represented or not – Yes/No. हां

No. 213 दि. 27/9/94 Name हीराधार पिता शंकर राम

Continued in उप जेल जगपुर नगर Jail

No. 967 dated 25/10/94 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़ म.प्र.

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent-Central/District/Sub-Jail

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. 2/ CJM Rayagada Dated 8-11-94 198

~~Forwarded to the~~ Submitted to Sessions Judge Rayagada (Orp)

C.J.Magistrate

Date of receipt in Appliate Court

(P.T.O.)

(10)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cri Appeal No. 1616/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

07/12/2005

Shri S.K. Chandel with Ku. Nlrupama Bajpai, counsel for the appellant.

Shri G.K. Beriwal, Addl. Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the respondent/State.

Oral judgment.

By this appeal through Superintendent, Central Jail, Jashpurnagar, accused/appellant - Heeradhar has questioned the legality of judgment of conviction and sentence dated 27/09/1994 passed by the learned Additional Sessions Judge, Jashpurnagar, in Sessions Trial No. 147/1994 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of murder of his father, convicted under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 16/05/1994 deceased Bhawar Ram was lying in the courtyard of the accused/appellant and when they were talking all of a sudden accused/appellant picked up a Lathi and assaulted and attacked Bhawar Ram with Lathi ~~and assaulted~~ 3-4 times as a result of which Bhawar Ram died on the spot. On hearing the cries the people of the vicinity came and tied the accused/appellant with the help of rope. Bhagat Ram Yadav lodged the first information report (Ex.P/1). The Station House Officer, Police Station: Pharsabahar after registering the case reached the scene of occurrence and prepared Panchnama of the dead

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

body of Bhawar Ram (Ex.P/2). He took into possession the blood stained soil and plain soil from the place of occurrence under (Ex.P/3). The postmortem of the dead body was (Ex.P/6). The postmortem (Ex.P/6) of the dead body was conducted by PW/5 Dr. G.S. Paikaera, who opined that Bhawar Ram died on account of the head injury and hemorrhage and the death of Bhawar Ram was homicidal in nature. The weapon of the offence of Lathi was recovered under Ex.P/4. After completion of the investigation, the charge-sheet was filed in the Court of Judicial Magistrate First Class, Jashpurnagar, who in turn committed the case to the Sessions Judge, Raigarh from where the learned Additional Sessions Judge, received the case on transfer.

The prosecution in order to prove the offence against the accused/appellant examined seven witnesses. The learned Additional Sessions Judge recorded the statement of the accused/appellant under Section 313 of the Cr.P.C. in which the accused/appellant denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

After hearing the arguments of learned counsel for the parties, learned Sessions Judge convicted and sentenced the accused/appellant in the manner mentioned in the earlier part of this judgment.

We have heard Shri S.K. Chandel, learned counsel for the accused/appellant and Shri G.K. Beriwal, Additional Public Prosecutor with Shri Ravindra Agrawal, Panel Lawyer for the respondent/State. We have also perused the evidence and the judgment of the trial Court.

Accused/appellant has examined DW/1- Vimla Bai and DW/2- Mayadhar Yadav in the defence.

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The fact of the homicidal nature of death of Bhawar Ram has not been disputed by the learned counsel for the accused/appellant. Apart from that, from the evidence of PW/2 – Kanchan Ram and PW/4 – Rashida, it is established that the accused/appellant assaulted the deceased with the lathi on the parietal region as a result of which Bhawar Ram died on the spot. They have stated that Bhawar Ram was lying on the ground and accused was sitting on the cot, all of a sudden he picked up the lathi and assaulted on the head of Bhawar Ram. This fact has not been denied even by the defence witnesses. Therefore, involvement of the accused/appellant in the crime in question, assaulting Bhawar Ram with the lathi and finding to this effect is based on the legal evidence. More-over, the above evidence stands corroborated by the medical evidence which has been proved by PW/5- Dr. G.S. Paikara who has stated that on 17/05/1994 he conducted the postmortem on the body of Bhawar Ram and saw that the mouth and eyes were closed, stomach was in swelling condition, blood clots were present on the parietal region from mandible extending upto mastoid area and the same was in the size of 3 ½" x 2". The mandible bone and parietal bone were fractured.

Learned counsel for the accused/appellant argued that at the time of incident the accused was not in a fit state of mind, moreover there is nothing on record, which shows that the accused/appellant assaulted the deceased with an intention to kill his father.

On the other hand, learned Additional Public Prosecutor for the respondent/State supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, if we examine the prosecution evidence and the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence of eye-witnesses PW/2 - Kanchan Ram and PW/4 - Rashida, there is nothing in their evidence to show that the accused/appellant was having any grudge against his father or that there was any quarrel. The simple facts are that the deceased Bhawar Ram was lying on the ground whereas the accused/appellant was sitting on the cot and when they were talking in presence of Kanchan Ram and Rashida, all of a sudden the accused/appellant picked up a Lathi and assaulted Bhawar Ram as a result of which he received injury on the parietal region and died. But, from the above facts, it can be inferred that when the accused/appellant assaulted Bhawar Ram with the help of Lathi on the parietal region, he had knowledge that by such act he was likely to cause death. The act of the accused/appellant was without pre-planned and pre-meditation and was on the spur of moment. Therefore, the offence against the accused/appellant under Section 304 Part –II of the I.P.C was made out.

In the result, the appeal is partly allowed. The conviction and sentence passed under Section 302 of the I.P.C. are set aside and instead thereof, accused/appellant is convicted under Section 304 Part II of the I.P.C and is sentenced to undergo rigorous imprisonment for nine years. The accused/appellant is in custody since 25/10/1994 thereby he has completed more than 11 years, as such he has already been served out the sentence. Therefore, he be set at liberty forthwith, if not required, in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

Raju

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